Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1284

AMOCO OIL COMPANY,

Petitioner,

vs.

OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, LOCAL 7-1, INC., AND PAUL A. SEMAN,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Respondents, Oil, Chemical and Atomic Workers International Union, Local 7-1, Inc. (hereinafter "OCAW"), and Paul A. Seman (hereinafter "SEMAN"), file this brief in opposition to the petition for Writ of Certiorari. This case presents no issue warranting this Court's attention.

QUESTION PRESENTED.

Whether this Court should reverse consistently applied precedent of not substituting judicial judgment for that of a consensually appointed labor arbitrator regarding the proprietary of his Award in a discipline case.

COUNTER-STATEMENT OF THE CASE.

The collective bargaining agreement between Petitioner and OCAW provides for the management right to discharge employees for just cause. (A. 40) Respondent Seman was discharged by Petitioner. (A. 42)

Pursuant to the collective bargaining agreement, Arbitrator James P. Martin was empowered to serve as Impartial Arbitrator to render a binding award concerning the following issue:

> "Was the Grievant, Paul Seaman, (sic) discharged for just cause? If not, what is the remedy?" (A. 35.)

The Arbitrator rendered his decision on October 6, 1975, awarding as follows:

> "That the grievance shall be, and hereby is, allowed. That the Grievant shall promptly be reinstated to his employment with the Employer, without loss of seniority but without back pay." (A. 46.)

The Company discharged Mr. Seman for an alleged theft of Company property. The Arbitrator found in a well-reasoned opinion that the circumstantial evidence offered by the Company did not establish theft; thus, there was no cause for discharge. (A. 45) However, in finding that the Company did not act in bad faith, the Arbitrator made no award of back pay. Instead, the Arbitrator suggested that the Grievant may have an action for lost pay against the perpetrators of the acts that led to his termination. (A. 45)

Petitioner thereafter filed a motion to vacate the Award in the trial court, and Respondents filed a cross motion for order confirming and enforcing the Award. (A. 20) The trial court granted the Respondents' Motion finding *inter alia* that:

> "A district court must suppress any tendency to replace its evaluation of the facts for that of the chosen arbitrator." (A. 33, A. 34.)

On appeal to the Seventh Circuit Court of Appeals the Court ordered that the Award of the Arbitrator be enforced, stating:

> "Here, the arbitrator was empowered to review the propriety of a discharge under a "just cause" standard. His view of the circumstances surrounding the termination led him to conclude that just cause did not exist. His award, therefore, "draws it essence from the collective bargaining agreement" and does not "manifest any infidelity to this agreement". *Enterprise Wheel, supra,* at 597. Our inquiry goes no further." (A. 12-A. 13.)

ARGUMENT.

The issue posed to the Arbitrator was whether there was just cause for discharge. The award of the Arbitrator sustained the grievance finding no just cause for discharge.

The Petitioner seeks judicial review of the merits of the Arbitrators Award on the pretext that there is need for clarification of the standards first enunciated by this Court in the landmark Steelworkers Trilogy (*United Steelworkers of America* v. *American Manufacturing Co.*, 363 U. S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U. S. 593 (1960) and uniformly applied thereafter, without need for clarification, in innumerable Court decisions. See *e.g., Crigger* v. *Allied Chemical Corporation,* 500 F. 2d 1218 (4th Cir., 1974); *International Association of Heat and Frost Insulators and Asbestos Workers, Local 66* v. *Leona Lee Corp.*, 489 F. 2d 1032 (5th Cir., 1974); *Timken Company* v. *United Steelworkers of America,* 492 F. 2d 1178 (6th Cir. 1974); *International Union of Electrical, Radio and Machine Workers, AFL-CIO* v. *Peerless Pressed Metal Corporation,* 489 F. 2d 768 (1st Cir., 1973); *Morris Werner-Continental, Inc.*, 466 F. 2d 1185 (6th Cir., 1972) *cert. denied,* 411 U. S. 965; *International Union of District 50, United Mine Workers of America* v. *Bowman Trans-*

portation, Inc., 421 F. 2d 934 (5th Cir., 1970); *Lynchburg Foundry Company, Division of Woodward Iron Company* v. *United Steelworkers of America, Local 2556*, 404 F. 2d 259 (4th Cir., 1968); *Yellow Cab Company* v. *Democratic Union Organizing Committee, Local 777, S. I. U. N. A., AFL-CIO*, 398 F. 2d 735 (7th Cir., 1968), *cert. denied*, 393 U. S. 1015 (1969); *International Association of Machinists, District No. 8, AFL-CIO* v. *Campbell Soup Company*, 406 F. 2d 1223 (7th Cir., 1969), *cert. denied*, 396 U. S. 820 (1969). It is evident from the above and other cases that there is no need for the guidance suggested by the Petitioner nor for a clarification of standards for judicial review of arbitration awards.

Thus, the gist of the Petition is a blatant attempt to seek judicial re-determination of the merits of the arbitration award. If the Petitioner is successful not only will the courts be in innundated with potential review of hundreds of arbitration awards, but the national policy fostering the resolution of labor disputes through the consensual arbitration process would be thwarted. As cogently stated by the Seventh Circuit in *Cannon* v. *Consolidated Freightways Corp.*, 524 F. 2d 290, 294-295 (7th Cir. 1975):

> "It is well settled that 'the refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements'. *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593, 596. Any other rule would thwart the federal policy encouraging settlement of industrial strife through means chosen by the parties. Id.; see 29 U.S.C. Section 173(d). This judicial deference to the arbitrator's decision is founded upon the desire to effectuate the decision of the union and company to employ arbitration and upon the belief that the circumstances surrounding arbitration insure fair treatment to the individual employee."

Further, Petitioner's contention that the arbitrator's award is arbitrary or capricious or exceeded his authority is no more than a mask for soliciting judicial review of the merits of the

award. Yet, as stated by the Fifth Circuit Court of Appeals in *Gulf States Telephone Company* v. *Local 1692, International Brotherhood of Electrical Workers, AFL-CIO*, 416 F. 2d 198, 202 (1969):

> "The arbiter was chosen to be the Judge. That Judge has spoken. There it ends."

That the Seventh Circuit did not redetermine the merits of the arbitrator's findings, is obvious from its decision; that decision will neither be reiterated nor re-argued here.

The one case suggested by the Petitioner as representing a conflict in Circuits during the seventeen years that the standards set forth in the *Steelworker* Trilogy have consistently and uniformly been applied neither represents a conflict nor demonstrates the need for clarification of the standards therein set forth. Thus, in *Magnavox Company of Tenn.* v. *International U. of E. R. & M. W.*, 410 F. 2d 388 (6th Cir., 1969), the Sixth Circuit found that an arbitration award was in direct conflict with a provision in the collective bargaining agreement specifically limiting the arbitrator's authority to determine discipline. No conflict between the contract and the arbitration award exists here.

Moreover, in the one case cited by the Petitioner where an arbitration award was not enforced by the courts, *Amalgamated Food & Allied Workers Union, Local 56* v. *Great A & P Co.*, 415 F. 2d 185 (3rd Cir., 1969), enforcement was denied because the arbitrator failed to fulfill his obligation to consider the merits of the cause, the Court finding that, in effect, the merits of the cause required arbitral rather than judicial determination.

In sum, the evident and intended purpose of the Petition is to substitute for binding arbitration and resolution of labor disputes through a terminal, rational, expeditious and consensual system that of judicial review, the effect of which would destroy the internal contractual machinery negotiated to resolve such

labor disputes. This purpose of the Petition is neither in the interests of management, nor labor unions. nor is it favored by the declared national policy.

CONCLUSION.

For all of the above reasons, it is submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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